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7 **LOUIS TROVATO, JOSE L. REYES, RICK LANE, and AL GONZALES**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 **TIMOTHY GANTT**,

12 *Plaintiff,*

13 vs.

14 **COUNTY OF LOS ANGELES, CITY**
15 **OF LOS ANGELES, RICK LANE,**
16 **#116702, JOSE L. REYES #21778,**
17 **AL GONZALES #15614, LT. LOUIS**
18 **TROVATO, WILLIE WILLIAMS,**
19 **EDWARD BOYER, STERLING**
20 **NORRIS, AND DOES 1-10,**
21 **INCLUSIVE,**

22 *Defendants.*

23
24 **MICHAEL SMITH**,

25 *Plaintiff,*

26 vs.

27 **CITY OF LOS ANGELES, RICK**
28 **LANE, #116702, JOSE L. REYES**
29 **#21778, AL GONZALES #15614,**
30 **LT. LOUIS TROVATO, WILLIE**
31 **WILLIAMS, AND DOES 1-10,**
32 **INCLUSIVE,**

33 *Defendants.*

CASE NO.: CV08-05979 ODW (CWx)

Hon. Otis D. Wright, II, Trial Judge, Ctrm. 11

Hon. Carla M. Woehrle, Mag. Judge, Ctrm. 640, Roybal

Consolidated with:

CV09-08565 ODW (CWx)

DEFENDANTS' REPLY TO
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION IN LIMINE
NUMBERS 1 AND 13; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF SUREKHA
A. PESSIS

DATE: September 13, 2010
TIME: 4:00 p.m.
PLACE: Ctrm. 11

Final P.T.C.: August 30, 2010
Trial Date: September 21, 2010

1 **TO THE HONORABLE COURT, PLAINTIFFS AND THEIR ATTORNEYS**
2 **OF RECORD:**

3 Defendants City of Los Angeles, Willie L. Williams, Louis Trovato, Jose L. Reyes,
4 Rick Lane, and Al Gonzales hereby submit this Reply to Plaintiffs' Opposition to
5 Defendants' Motion in Limine Nos. 1 and 13.

6
7 DATED: August 30, 2010 **CARMEN A. TRUTANICH**, City Attorney
8 **GARY G. GEUSS**, Chief Assistant City Attorney
9 **CORY M. BRENT**, Assistant City Attorney

10
11 By /S/
12 **SUREKHA A. PESSIS**, Deputy City Attorney
13 *Attorneys for Defendants* **CITY OF LOS ANGELES,**
14 **WILLIE L. WILLIAMS, LOUIS TROVATO, JOSE**
15 **L. REYES, RICK LANE, and AL GONZALES**
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. DEFENDANTS' MOTION IN LIMINE NOS. 1 AND 13**

4 Defendants' In Limine Motion No. One seeks exclusion of the following:¹

5 1. Evidence of and references to any personnel complaints or personnel history
6 of any Los Angeles Police Department ("LAPD") Officer (current or former), including
7 Jose Reyes, Rick Lane, Louis Trovato and Willie Williams (including the related and
8 unrelated Internal Affairs investigations);

9 2. Evidence of and references to other civil suits concerning any of the
10 Defendants or any other peace officers who may be called to testify in this matter;

11 3. Evidence of and references to the "alleged" Los Angeles Police Department
12 "scandals", including the Rampart scandal, the Rodney King incident, the May Day
13 incident, the "Consent Decree" and/or the Christopher Commission Report.

14 Defendants' In Limine No. Thirteen seeks preclusion of the testimony of Deputy
15 District Attorneys Stephanie Sparagna and Donna Lebowitz on grounds that their
16 testimony is irrelevant and unfairly prejudicial. (Federal Rules of Evidence 402 and
17 403). Plaintiff deposed Deputy District Attorneys Donna Lebowitz and Stephanie
18 Sparagna in connection with an unrelated Internal Affairs report. Defendants filed
19 Motion in Limine No. One on June 14, 2010. These prosecutors were deposed on
20 July 9, 2010 and therefore Motion in Limine No. 13 could not be filed until August 13,
21 2010.

22
23 **II. PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS IN LIMINE**

24 **1) Motion in Limine No. 1.**

25 In their Opposition to Defendants' Motion In Limine No. One, Plaintiffs
26 confuse the analysis regarding "intent" and "motive" with the admission of evidence
27

28

1 ¹ Defendants separately have filed Motion in Limine No. 7 for Trifurcation.

1 relating to custom, practice and training issues in an effort to support their claim that
2 evidence of the Internal Affairs investigations should be admitted at trial.

3 Of course, the inquiry for whether an individual officer's past complaints, history,
4 "bad acts", or other investigative history, is very different from the issue of *Monell*
5 liability against a municipal entity or a supervisor. Nevertheless, Plaintiffs' arguments,
6 when parsed out as to which entity or individual against whom they are being asserted,
7 fail.

8
9 **A. *Monell* Claim**

10 Plaintiffs allege the City failed to properly train Reyes and Lane which
11 caused them to suffer a deprivation of their constitutional rights. Additionally, Plaintiffs
12 contend the City maintained unconstitutional policies such as those which called for the
13 subornation of perjury, failure to turn over exculpatory evidence and witness
14 intimidation. Plaintiffs, however, fail to identify any evidence supporting their claim
15 that Reyes and Lane were improperly trained. Moreover, Plaintiffs provide no authority
16 establishing the alleged failure to train the two Detectives, Reyes and Lane, gives rise
17 to *Monell* liability. Further, there is no evidence the City maintained the policies alleged
18 at Paragraph 10 of Smith's Complaint or Paragraph 11 of Gantt's Second Amended
19 Complaint. Finally, the findings of the 1992 Internal Affairs Investigation contradicts
20 any claim the investigation is relevant, even for a *Monell* phase. As such, the proffered
21 evidence is irrelevant and should be excluded.

22
23 **B. Supervisory Liability**

24 On the issue of supervisory liability, Plaintiffs rely on *Gutierrez-Rodriguez*
25 *v. Cartagena*, 882 F.2d 553 (1st Cir. 1989). Plaintiffs assert this case holds: "evidence
26 of prior complaints and how they were handled may be relevant on the issue of
27 supervisory liability." *Gutierrez*, however, is distinguishable from the instant case.

28 ///

1 In *Gutierrez, supra*, there was much evidence gathered prior to trial that the
 2 supervising officer, Soto, had a significant history of complaints about his violent and
 3 aggressive behavior which were ignored by his supervisors. In this case, there is no such
 4 history showing any pattern of misconduct or reckless disregard of civil rights by the
 5 Defendant Officers. The only "evidence" which Plaintiffs have is an unrelated Internal
 6 Affairs investigation, where neither Trovato nor Gonzales were accused of misconduct.²
 7 As such, Plaintiffs cannot argue the investigation has any bearing on their claims against
 8 Trovato, Gonzales, or Williams. Moreover, Plaintiffs present no evidence which
 9 demonstrates that Williams was a supervisor of either Reyes or Lane, or otherwise had
 10 personal involvement in this matter.

11 Specifically, as to retired Chief Williams, Plaintiffs present no evidence
 12 demonstrating that he was a supervisor of either Reyes or Lane, or that Williams had any
 13 personal involvement in this matter.

14 **C. Alleged Bad Acts of Defendant Officers to Show Intent or Motive**

15 Plaintiffs cite several cases in an effort to convince this Court the Defendant
 16 Officers' alleged prior bad acts should be admitted to demonstrate "intent" or "motive."
 17 None of these cases, however, support Plaintiffs' position.

18 Plaintiffs' first case, *Grandstaff v. City of Borger*, 767 F.2d 161 (5th Cir. 1985), has
 19 nothing to do with, and does not discuss anything about, an individual officer's intent
 20 or motive. Rather, the opinion relates to the admission of prior or subsequent acts of
 21 individual officers to show that "the disposition of a policymaker may be inferred,"
 22 circumstantially. Thus, the Court should disregard this authority.

23 Second, Plaintiffs cite another 5th Circuit case, *Hitt v. Connell*, 301 F.3d 240 (5th
 24 Cir. 2002), as standing for the proposition that Lane and Reyes' prior acts will "shed
 25 light on the reasons for their conduct." Again, Plaintiffs seem to misstate and
 26

27
 28 ² A copy of the 1992 Internal Affairs investigation has been submitted to the Court
 along with a courtesy copy of Motion in Limine No. One.

1 misunderstand the law discussed in *Hitt*.

2 In *Hitt, supra*, the Court held that testimony by other deputies regarding
3 disciplinary actions taken by Connell in his supervisory capacity was admissible to prove
4 his motive for firing the plaintiff. In this case, Lane and Reyes are not seeking to
5 exclude anything concerning their supervisory conduct. Further, this is not a case
6 involving wrongful termination.

7 Third, Plaintiffs cite *United States v. Curtin* 489 F. 3d 935 (9th Cir. 2007). *Curtin*,
8 provides an analysis on the relation of relevancy under *Fed. R. Evid. Rules 402, 403* and
9 *404(b)*. In short, the *Curtin* Court notes that in light of *Rule 402*, “*Rule 404(b)* is a rule
10 of inclusion -- not exclusion.” The Court goes on to state that evidence of prior bad acts
11 to demonstrate a character’s proclivity as an “inference that conduct on a particular
12 occasion was in conformity with it,” is not admissible (*Id.* at 944). It only becomes
13 admissible if and when the “evidence bears upon a relevant issue in the case such as
14 motive, opportunity, or knowledge . . . *especially when that issue involves the actor’s*
15 *state of mind and the only means of ascertaining that mental state is by drawing*
16 *inferences from conduct.*” (*Id.* at 945, *emphasis in original.*)

17 Defendants certainly don’t argue with this holding. However, Plaintiffs fail to
18 identify any evidence of “intent” or “motive.”³ As such, the only reason Plaintiffs seek
19 to introduce the proffered evidence is to show a propensity for conduct, which, under
20 *Rule 403*, is far more prejudicial than probative.⁴

21
22 **2) Motion in Limine No. 13.**

23 **A. Prosecutors Sparagna and Lebowitz Should Not Testify**

24 Neither Ms. Sparagna nor Ms. Lebowitz have any relevant information about the
25

26 ³ The content and resolution of the 1992 Internal Affairs report support
27 Defendants’ position.

28 ⁴ See Declaration of Surekha A. Pessis, attached to Defendants’ Motion in Limine
No. One.

DECLARATION OF SUREKHA A. PESSIS

I, SUREKHA A. PESSIS, declare as follows:

I am an attorney at law, duly licensed to appear before this Court, and I am counsel for Defendants in *Timothy Gantt v. County of Los Angeles, et al*, case no. CV-08-05979 ODW (CWx) and *Michael Smith v. City of Los Angeles, et al*, case no. CV-09-08565 ODW (CWx). If called to testify, I would state the following to be true and correct based upon my own personal knowledge:

2. Attached hereto as Exhibit "A" is a true and correct copy of the docket from *People v. Harris*, BA060908 which provides the People were unable to proceed on July 21, 1992. The docket does not provide any reference to discovery matters.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed on August 30, 2010 at Los Angeles, California.

/S/
SUREKHA A. PESSIS, Declarant

IN THE MUNICIPAL COURT OF CRIM JUSTICE CTR (LAC) JUDICIAL
DISTRICT,
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
NO. BA060908 PAGE NO. 1
THE PEOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 12/14/09
DEFENDANT 01: CLEVELAND EDWARD HARRIS
LAW ENFORCEMENT AGENCY EFFECTING ARREST: LAPD - CENTRAL AREA

BAIL: APPEARANCE	AMOUNT	DATE	RECEIPT OR	SURETY COMPANY	REGISTER
DATE	OF BAIL	POSTED	BOND NO.		NUMBER

CASE FILED ON 07/07/92.

COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING
COMMITTED, ON OR ABOUT 05/15/92 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING
OFFENSE(S) OF:

COUNT 01: 187(A) PC FEL

PCD FOUND 070392 AT 12:42

NEXT SCHEDULED EVENT:

07/07/92 830 AM ARRAIGNMENT DIST CRIM JUSTICE CTR (LAC) DIV 030

ON 07/07/92 AT 830 AM IN CRIM JUSTICE CTR (LAC) DIV 030

CASE CALLED FOR ARRAIGNMENT

PARTIES: WILLIAM R. CHIDSEY, JR. (JUDGE) ROBERT SAIKI (CLERK)
BERGUNDY DAY (REP) IRVIN S COHEN (DDA)

DEFENDANT DEMANDS COUNSEL.

COURT REFERS DEFENDANT TO THE PUBLIC DEFENDER.

PUBLIC DEFENDER APPOINTED. BOB LABAU - P.D.

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY BOB LABAU DEPUTY PUBLIC
DEFENDER

DEFENDANT STATES HIS/HER TRUE NAME AS CHARGED.

DEFENDANT ADVISED OF THE FOLLOWING RIGHTS VIA VIDEO CASSETTE:

THE RIGHT TO BE REPRESENTED BY A LAWYER AT ALL STAGES OF THE PROCEEDINGS,
INCLUDING THE RIGHT, IF QUALIFIED, TO BE REPRESENTED BY A LAWYER AT PUBLIC
EXPENSE;

IN ANY CASE IN WHICH YOU ARE FURNISHED A LAWYER, EITHER THROUGH THE PUBLIC
DEFENDER OR PRIVATE COUNSEL APPOINTED BY THE COURT, UPON CONCLUSION OF THE
CRIMINAL PROCEEDINGS IN THE TRIAL COURT, THE COURT SHALL MAKE A
DETERMINATION OF YOUR PRESENT ABILITY TO PAY ALL OR A PORTION OF THE COST OF

COUNSEL. IF THE COURT DETERMINES THAT YOU HAVE THE PRESENT ABILITY TO PAY
ALL OR PART OF THE COST, IT SHALL ORDER YOU TO PAY THE SUM TO THE COUNTY IN
ANY INSTALLMENTS AND MANNER WHICH IT BELIEVES REASONABLE AND COMPATIBLE WITH
YOUR FINANCIAL ABILITY. EXECUTION MAY BE ISSUED ON THE ORDER IN THE SAME
MANNER AS ON A JUDGMENT IN A CIVIL ACTION;

YOU MAY PLEAD GUILTY, NOT GUILTY OR, WITH THE CONCURRENCE OF THE COURT, NOLO
CONTENDERE TO THE CHARGES IN THE COMPLAINT;

THE CASE WILL BE DISMISSED IF NOT HEARD WITHIN THE STATUTORY TIME, UNLESS GOOD
CAUSE FOR A DELAY IS SHOWN;

THE RIGHT TO A TRIAL BY JURY;

THE RIGHT NOT TO TESTIFY IN YOUR CASE; AND THE RIGHT TO TESTIFY IN YOUR CASE
IF YOU WISH;

THE RIGHT TO BE RELEASED UPON POSTING OF A REASONABLE BAIL IN AN AMOUNT TO BE
FIXED BY THE COURT;

IF YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE

OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.
WITHIN 10 COURT DAYS OF COMPLETION OF ARRAIGNMENT OR ENTRY OF NOT GUILTY PLEA, WHICHEVER IS LATER, YOU HAVE THE RIGHT TO A PRELIMINARY HEARING IN THIS COURT TO DETERMINE WHETHER THERE IS A REASONABLE CAUSE TO BELIEVE THAT THE PUBLIC OFFENSE WITH WHICH YOU ARE CHARGED WAS COMMITTED AND WHETHER THERE IS REASONABLE CAUSE TO BELIEVE YOU COMMITTED SUCH CHARGE;
IN THE SUPERIOR COURT, YOU HAVE THE RIGHT TO HAVE YOUR TRIAL WITHIN 60 DAYS OF THE INFORMATION BEING FILED IN THAT COURT;
AT ANY PRELIMINARY HEARING OR TRIAL, YOU HAVE THE RIGHT TO BE CONFRONTED BY AND TO CROSS-EXAMINE WITNESSES WHO TESTIFY AGAINST YOU, AND THE RIGHT TO HAVE WITNESSES SUBPOENAED INTO COURT TO TESTIFY IN YOUR DEFENSE AT NO COST TO YOU;
THAT IF YOU PLEAD GUILTY, NOLO CONTENDERE OR ARE CONVICTED AFTER A TRIAL, YOU HAVE A RIGHT TO A REASONABLE CONTINUANCE BEFORE SENTENCE IS IMPOSED;
DEFENDANT WAS INFORMED OF HIS RIGHT TO BE ADVISED OF THE FOLLOWING:
THE NATURE OF THE CHARGES AGAINST HIM, THE ELEMENTS OF THE OFFENSE, AND THE POSSIBLE DEFENSES THERETO;
THE EFFECTS OF A PLEA OF GUILTY OR NOLO CONTENDERE;
THE EFFECTS OF PROBATION;
THE EFFECTS OF A PRIOR CONVICTION;

A COPY OF THE COMPLAINT AND THE ARREST REPORT GIVEN TO DEFENDANT'S COUNSEL. DEFENDANT'S FINANCIAL STATEMENT FILED.
DEFENDANT ADVISED THAT IN ANY CASE IN WHICH YOU ARE FURNISHED A LAWYER, EITHER THROUGH THE PUBLIC DEFENDER OR PRIVATE COUNSEL APPOINTED BY THE COURT, UPON CONCLUSION OF THE CRIMINAL PROCEEDINGS IN THE TRIAL COURT, THE COURT SHALL MAKE A DETERMINATION OF YOUR PRESENT ABILITY TO PAY ALL OR A PORTION OF THE COST OF COUNSEL. IF THE COURT DETERMINES THAT YOU HAVE THE PRESENT ABILITY TO PAY ALL OR PART OF THE COST, IT SHALL ORDER YOU TO PAY THE SUM TO THE COUNTY IN ANY INSTALLMENTS AND MANNER WHICH IT BELIEVES REASONABLE AND COMPATIBLE WITH YOUR FINANCIAL ABILITY. EXECUTION MAY BE ISSUED ON THE ORDER IN THE SAME MANNER AS ON A JUDGEMENT IN A CIVIL ACTION;
DEFENDANT WAIVES ARRAIGNMENT, READING OF COMPLAINT, AND STATEMENT OF CONSTITUTIONAL AND STATUTORY RIGHTS.
DEFENDANT WAIVES FURTHER ARRAIGNMENT.
DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 187(A) PC.
TIME ESTIMATE 2 HRS.

BAIL SET AT NO BAIL.
NEXT SCHEDULED EVENT:
07/17/92 900 AM PRELIMINARY HEARING DIST CRIM JUSTICE CTR (LAC) DIV 043

CUSTODY STATUS: REMANDED TO CUSTODY

ON 07/17/92 AT 900 AM IN CRIM JUSTICE CTR (LAC) DIV 043

CASE CALLED FOR PRELIMINARY HEARING
PARTIES: JON M. MAYEDA (JUDGE) PEARLINE FERGERSON (CLERK)
MARIANNE BALES (REP) DONNA LEBOWITZ (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY CHARLES ELLIOTT DEPUTY PUBLIC DEFENDER

BAIL SET AT NO BAIL
REMANDING ORDER ISSUED, NO BAIL.
NEXT SCHEDULED EVENT:
07/21/92 830 AM PRELIMINARY HEARING DIST CRIM JUSTICE CTR (LAC) DIV 043

CUSTODY STATUS: REMANDED TO CUSTODY

EXHIBIT A PAGE 8

ON 07/21/92 AT 830 AM IN CRIM JUSTICE CTR (LAC) DIV 043

CASE CALLED FOR PRELIMINARY HEARING

PARTIES: JON M. MAYEDA (JUDGE) PEARLINE FERGERSON (CLERK)

LINDA SWARTZ (REP) DONNA LEBOWITZ (DA)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY CHARLES ELLIOTT DEPUTY
PUBLIC DEFENDER

COUNT (01) : DISPOSITION: ALL OTHER DISMISSALS NOT (A) TO (L)

PEOPLE UNABLE TO PROCEED. DEFENSE MOTION TO DISMISS, GRANTED.

DEFENDANT DISCHARGED.

NEXT SCHEDULED EVENT:

PROCEEDINGS TERMINATED

CUSTODY-STATUS: DEFENDANT RELEASED

ON 08/05/92 AT 800 AM :

ADR ISSUED ON 8-4-92.

PROCEEDINGS TERMINATED



THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS FULL, TRUE,
AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

ATTEST: 12/14/09 BY: J. Indur DEPUTY